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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 976

TOWNSHIP OF HAMILTON TOWNSHIP, in the County of Atlantic, a Municipal Corporation of the State of New Jersey, and WILLIAM DAVIES, NICHOLAS RETTINO, ROBERT J. KLEUSER, MICHAEL BUTLER, and ROBERT H. MORRIS, individually, as Citizens and Taxpayers of Atlantic County, and as members of the Hamilton Township Commitee,

Petitioners,

vs.

BOARD OF CHOSEN FREEHOLDERS of the County of Atlantic and G. T. B. COMPANY, a partnership, and ELIAS G. NAAME and HERMAN ORMAN, individually and as partners, and EDWIN H. HELFANT, Guardian Ad Litem for JOSEPH E. NAAME, an infant, and ATLANTIC COUNTY BAR ASSOCIATION.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

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IN THE

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OCTOBER TERM, 1967

No.

TOWNSHIP OF HAMILTON TOWNSHIP, etc., *et al.*,
Petitioners,

vs.

BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF ATLANTIC, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

The Township of Hamilton Township and William Davies, Nicholas Rettino, Robert J. Kleuser, Michael Butler and Robert H. Morris, your Petitioners, pray that a writ of certiorari issue to review the judgment of the Supreme Court of New Jersey entered in the above entitled case on November 20, 1967.

Opinions Below

The opinion of the Honorable Anthony J. Cafiero, Assignment Judge of the Superior Court, Atlantic County, New Jersey, is set forth in the Appendix submitted by your petitioners on its appeal to the Appellate Division of the Superior Court of New Jersey at page 128a et seq. This opinion was not reported. This Appendix has been submitted as part of the record.

The opinion of the Supreme Court of New Jersey affirming the judgment of the trial court is set forth in Appendix A hereto, infra page 19.

Jurisdiction

1. The judgment of the Supreme Court of New Jersey was entered November 20, 1967 (infra, Appendix A, page 19). It is final by its terms.

2. The Federal question was raised in the Complaint (infra, Appendix A, page 12).

3. The jurisdiction of this Court is invoked under 28 U. S. Code 1257 (3).

Questions Presented

The questions presented are:

1. Does a Court Order to establish permanent Constitutional County Courts at locations other than the County Seat, in the absence of the vote of a majority of the qualified electorate as provided by statute, violate the Fourteenth Amendment to the United States Constitution?

2. Does the decision of a County Board of Chosen Freeholders to locate a permanent Constitutional County Court at a place other than the County Seat, in the absence of the vote of a majority of the qualified electorate as provided by statute, contravene the Ninth Amendment to the United States Constitution?

3. May a permanent Constitutional County Court be located at a place other than the County Seat?

Constitutional Provisions Involved

The Ninth Amendment to the Constitution of the United States provides:

> "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people;"

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part as follows:

> "nor shall any State deprive any person of life, liberty or property without due process of law."

Article I, Section 21 of the New Jersey Constitution provides:

> "This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people."

Article VI, Section I (1) of the New Jersey Constitution provides:

> "The judicial power shall be vested in a Supreme Court, a Superior Court, County Courts, and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law."

Statement of the Case

Atlantic County was created by an Act of the New Jersey Legislature passed February 7, 1837, from the eastern part of Gloucester County contained in the Townships of Galloway, Hamilton, Weymouth and Egg Harbor.

After the creation of the County elections were held, Freeholders elected from each township and Mays Landing, Hamilton Township, was selected as the County Seat.

From October 17, 1837 until May, 1926, all Atlantic County Court sessions were held in Mays Landing, Hamilton Township, the County Seat.

In 1900, the New Jersey Legislature passed Chapter 149, an Act entitled "An Act relative to the supreme and circuit courts." Paragraph 19 of this Act authorized the County Circuit Courts to be held at the times and places fixed by the Supreme Court.

On November 7, 1922, in the general election, the following public question appeared on the ballot: "Shall the

County Seat of Atlantic County be changed from Mays Landing, Hamilton Township, to the City of Atlantic City?'' The question was defeated and Mays Landing, Hamilton Township, remains the County Seat of Atlantic County.

On March 29, 1926, the New Jersey Legislature supplemented the 1900 Act by approving Chapter 253, authorizing the Supreme Court Justice holding the circuit in a county bordering on the Atlantic Ocean, by Order, to direct that supreme and circuit court issues triable in a county might be tried at a place other than the county seat.

Based on the Laws of 1900, Chapter 149, as supplemented, the Honorable Luther A. Campbell, Justice of the Supreme Court of New Jersey, signed an Order on April 12, 1926, ordering that Supreme and Circuit Court issues triable in the County of Atlantic be tried in the courtroom in the Guarantee Trust Building, Atlantic City, Atlantic County, New Jersey.

The Atlantic County Bar Association in recent years, has been urging the Board of Chosen Freeholders of Atlantic County, to provide sufficient and adequate Court facilities for the trial of civil causes in Atlantic City.

On June 30, 1966, the Honorable Anthony J. Cafiero signed an Order directed to the Board of Chosen Freeholders of Atlantic County to provide such facilities in Atlantic City, outside the county seat.

On December 14, 1966, the Board of Chosen Freeholders of Atlantic County passed a Resolution authorizing and directing the County Solicitor to negotiate a lease for space to house the County Court, with the G. T. B. Company, owners of the Guarantee Trust Building, in Atlantic City, for 5,500 square feet of space at $5.75 per square foot per year, under the terms of a 25-year lease.

Before any lease was signed, plaintiffs moved on Complaint in lieu of prerogative writ and Order to Show Cause for a restraining order with reference to the lease.

Hearings were held before the Honorable Anthony J. Cafiero, on May 26, 1967, May 31, 1967, and June 1, 1967.

It will be noted that during the course of the hearings, the trial judge stated that the Board of Chosen Freeholders had not actually complied with his Order and the facility they proposed to furnish was neither adequate nor under one roof as had been ordered by him.

On June 1, 1967, a motion by defendants-respondents for summary judgment was granted.

On June 2, 1967, a notice of appeal was filed by plaintiffs-appellants, the Petitioner herein, with the Appellate Division of the New Jersey Superior Court.

A motion for certification of the appeal by the respondents, to the Supreme Court of New Jersey was granted on September 19, 1967, and the cause argued before the New Jersey Supreme Court on October 24, 1967.

On November 20, 1967, the Supreme Court affirmed the judgment of the Court below and this petition for a writ of certiorari followed.

Reasons for Granting the Writ

Petitioners believe that this case presents an issue which has never been adjudicated and which should be determined. That issue involves the physical location of the Constitutional County Courts.

Petitioners submit that their concern is with the location of the Constitutional Courts set forth in New Jersey Constitution, Article VI, Section I (1) and while the New Jersey Constitution and New Jersey Statute law do not directly answer the question, there is proof, albeit indirect, that the matter of court location is covered by law. *L.* 1918, *c.* 195, now New Jersey Statutes Annotated 40:19–1 to 9 entitled "County Seat," is a material aid in answering this question.

The present County Seat of Atlantic County is Mays Landing, Hamilton Township. N. J. S. A. 40:19–1 authorizes changes in the county seat. 40:19–2 permits the board of chosen freeholders to adopt a resolution that the county seat be changed subject to the approval of a majority of the voters. 40:19–3 directs the board to pass a resolution on change on petition of at least 20% of the voters of the county. 40:19–4, 40:19–5 and 40:19–6 provide for the referendum, type of ballot, and submission of the question at the general election. 40:19–7 provides that if a majority of the voters approve the change in the location of the county seat "the board of chosen freeholders shall *thereupon* provide suitable lands and buildings necessary for the accommodation of the courts and offices, and for the transaction of the business of the county in the municipality to which the change shall be made, and shall suitably furnish and equip such buildings." (Italics added.) 40:19–8 provides that "after the acquisition and furnishing of such buildings, *the courts of the county and all the county officers shall be established therein.*" (Italics added.) 40:19–9 provides for only one such referendum in five years. The statute provides that the location of the county seat and the location of the county court are inextricably joined and the voters are the only ones who have the power to make a change in the court location.

The only referendum election ever held in Atlantic County pursuant to this Statute occurred in the general election of November 7, 1922. The question on the ballot was "Shall the County Seat of Atlantic County be changed from Mays Landing, Hamilton Township, to the City of Atlantic City?" The question was defeated and Mays Landing, Hamilton Township, has remained the County Seat. An attempt is now being made to do by indirection what could not be accomplished by statutory compliance.

The New Jersey Supreme Court has taken the position that there is nothing in the law which would require the location of courtroom facilities at the County Seat unless

the County Seat is changed. The Court stated that there was nothing in the State Constitution nor in New Jersey Statute law that indicated such a requirement.

If, as the Supreme Court of New Jersey stated, these Statutes apply only to a situation where the county electorate vote to change the location of the County Seat, we have an anomalous situation. *The Court has said in effect, that if the location of the County Seat is changed the location of the Courts must be changed to the new County Seat, but if there is no change in the location of the County Seat, the Courts may be placed in any other location within the county.* It is inconceivable that the New Jersey Legislature intended such an interpretation of New Jersey Statutes Annotated 40:19–1 to 9.

Chapter 40 states that it is the voters who are vested with the power to make the decision as to the location of the County Seat and through this decision the Court location; it is the voter who in the final analysis makes the determinations. In support of this right in the voter, the Ninth Amendment to the United States Constitution and its counterpart in the New Jersey Constitution, Art. I, Sec. 21, guarantee the right of the people to determine for themselves the location of the Courts, and this right cannot be taken away from them without violating the Fourteenth Amendment to the United States Constitution.

In a separate concurring opinion in *Griswold* v. *Connecticut,* 381 U. S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678, (1965) Mr. Justice Goldberg stated that certain basic rights are protected by the Ninth Amendment even though they may not be specifically guaranteed in so many words by the first eight Amendments to the Constitution. Justice Goldberg added (page 519) "the Ninth Amendment shows a belief of the Constitutions' authors that fundamental rights exist that are not expressly enumerated in the first eight Amendments, and an intent that the list of rights included there not be deemed exhaustive. As any student

of this Court's opinion knows, this Court has held, often unanimously, that the Fifth and Fourteenth Amendments protect certain fundamental personal liberties from abridgement by the Federal Government or the States. . . . The Ninth Amendment simply shows the intent of the Constitution's authors that other fundamental personal rights should not be denied such protection or disparaged in any other way simply because they are not specifically listed in the first eight Constitutional Amendments. I do not see how this broadens the authority of the Court; rather it serves to support what this Court has been doing in protecting fundamental rights."

Petitioners maintain that they have a fundamental right by their vote to choose the location of the Constitutional County Courts which right is further spelled out in New Jersey L. 1918, c. 185 (N. J. S. A. 40:19–1 to 9).

Justice Goldberg stated that the Court was not turning somersaults with history in arguing that the Ninth Amendment is relevant in cases dealing with a State's infringement of a fundamental right. He said (page 520) "While the Ninth Amendment—and indeed the entire Bill of Rights—originally concerned restrictions upon federal power, the subsequently enacted Fourteenth Amendment prohibits the States as well from abridging fundamental personal liberties. And the Ninth Amendment, in indicating that not all such liberties are specifically mentioned in the first eight amendments is surely relevant in showing the existence of other fundamental personal rights, now protected from State as well as Federal infringement. In sum, the Ninth Amendment simply lends strong support to the view that 'liberty' protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight Amendments."

Petitioners respectfully submit that the decision of the New Jersey Supreme Court herein denies the voters of At-

lantic County the right to vote on location of the County Seat as the method of determining the location of Constitutional County Courts. This denial violates N. J. S. A. 40:19–1 to 9 and thereby contravenes the Fourteenth Amendment in taking the ultimate right away from the people.

CONCLUSION

For the reasons stated, it is respectfully submitted that this Petition for Certiorari should be granted.

Respectfully submitted,

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